

REMARKS

The Applicant and Applicant's attorney wish to thank the Examiner for the personal interview on April 1, 2008. During the interview, proposed amendments to claims 26 and 39 were reviewed and it was agreed that the newly proposed amended claims 26 and 39 were not anticipated by the prior art of record.

Furthermore, the Applicant and Applicant's attorney wish to thank the Examiner for the time spent reviewing the application and preparing the Office Action. In the Office Action, claims 26-50 were rejected. By this paper, 26, 39 and 45 have been amended. Applicant submits that claim amendments do not add new matter and entry thereof is respectfully requested. As a result, claims 26-50 are pending and should be in condition for allowance. Reconsideration of the above-identified claims is now respectfully requested.

Rejections Under 35 U.S.C. § 102

In the Office Action, claims 26, 29, 30-33 and 38-41 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Cutler* (U.S. Patent No. 6,761,667).

Applicant submits that *Cutler* does not anticipate the limitations recited with respect to independent claims 26 or 39. Specifically, *Cutler* fails to disclose a treadmill, as defined in claim 26, comprising a lift motor assembly pivotally coupled on a first end to the support base, and pivotally coupled on an opposite end to a first portion of a cam at a first pivoting location, a second portion of the cam being pivotally linked to the support base at a second pivoting location, the first pivoting location of the cam being positioned beneath the second pivoting location of the cam when the treadbase is in a horizontal position, as recited in claim 26.

Similarly, *Cutler* fails to disclose a treadmill, as defined in claim 39, comprising a lift motor assembly pivotally coupled on a first end to a first end of the support base, and pivotally

coupled on an opposite end to a first portion of a cam at a first pivoting location, a second portion of the cam being pivotally linked to the support base, wherein the treadbase is selectively inclined when the first pivoting location is moved away from the first end of the support base, as recited in claim 39.

Claims 29, 30-33, 38 depend from claim 26, and claims 40-41 depend from claim 39, and thus incorporate all the limitations recited respectively therein. As such, reconsideration and removal of the rejection under 35 U.S.C. § 102 to claims 26, 29, 30-33 and 38-41 are requested.

Rejections Under 35 U.S.C. § 103

In the Office Action, claims 28, 34-37 and 42-50 were rejected under 35 U.S.C. § 103(a) as being obvious in light of *Cutler*.

With respect to the rejection made under 35 USC 103(a), Applicant notes that the *Cutler* reference and the claimed invention were, at the time the claimed invention was made, owned by or subject to an obligation of assignment to the Assignee of the present invention¹. Accordingly, inasmuch as *Cutler* can qualify as prior art only under 35 USC 102(e), Applicant submits that *Cutler* is not properly considered prior art under 35 USC 103(c) and should be removed as a reference.

¹ While not required, as a matter of courtesy Applicant notes that the assignment for the *Cutler* reference is recorded in the United States Patent and Trademark Office on Reel 012365, Frame 0100, and the assignment for the current application is recorded in the United States Patent and Trademark Office on Reel 017352, Frame 0665.

Rejections Under 35 U.S.C. § 112

In the Office Action, claims 26 and 45 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. By this paper, claims 26 and 45 have been amended for clarity. Applicant requests reconsideration and removal of the rejection under 35 U.S.C. § 112 to claims 26 and 45.

Conclusion

By this paper pending claims 26, 39 and 45 have been amended. As a result, claims 26-50 are pending and should be in condition for allowance. Reconsideration and allowance of the above-identified claims are now respectfully requested.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 24 day of April 2008.

Respectfully submitted,

/Michael M. Ballard/

Michael M. Ballard
Registration No. 54,978
Attorney for Applicants
Customer No. 022913
Telephone No. (801) 533-9800
Fax No.: (801) 328-1707
mballard@wnlaw.com